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6                   **UNITED STATES DISTRICT COURT**  
7                   **EASTERN DISTRICT OF WASHINGTON**

8                   **ROBERT E. MILES and LESLIE A.**  
9                   **MILES,**

10                  Plaintiffs,

11                  v.

12                  **MBNA AMERICAN BANK, N.A.,**  
13                  **DOES 1-4 INCLUSIVE,**

14                  Defendants.

15                  NO. CV-04-336-RHW

16                  **ORDER GRANTING DEFENDANT'S**  
17                  **MOTION TO DISMISS; DENYING**  
18                  **PLAINTIFFS' MOTION TO ENLARGE**  
19                  **TIME TO VACATE THE**  
20                  **ARBITRATION AWARD IN STATE**  
21                  **COURT**

22         Before the Court are Plaintiffs' Motion to Enlarge Time to Vacate the Arbitration  
23         Award in State Court (Ct. Rec. 20) and Defendant MBNA American Bank, N.A.'s  
24         Motion to Dismiss (Ct. Rec. 24). The motions were heard without oral argument.

25                  **BACKGROUND**

26         On September 15, 2004, Plaintiffs filed a motion asking the Court to enter an order  
27         vacating an arbitration award (Ct. Rec. 1). This motion was filed before Plaintiffs had  
28         filed a complaint. On September 22, 2004, the Court directed Plaintiffs to comply with  
the Federal Rules of Civil Procedure by filing an amended complaint (Ct. Rec. 6).  
Plaintiffs complied and filed an Amended Complaint on October 14, 2004. On January  
28, 2005, Plaintiffs filed a Motion to Enlarge Time to Vacate the Arbitration Award in  
State Court (Ct. Rec. 20). A telephonic scheduling hearing was held on February 11,  
2005. At the hearing, Plaintiffs' pending motion was discussed. The Court directed  
Defendant MBNA to file a Motion to Dismiss in order to allow the Court to address  
whether it had federal subject matter jurisdiction to hear this case. On February 16, 2005,

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; DENYING**  
**PLAINTIFFS' MOTION TO ENLARGE TIME TO VACATE THE**  
**ARBITRATION AWARD IN STATE COURT ~ 1**

1 Defendant filed its Motion to Dismiss (Ct. Rec. 24).

## 2 DISCUSSION

### 3 I. Defendant's Motion to Dismiss

4 Defendant argues that the allegations in Plaintiffs' complaint are insufficient, on  
 5 their face, to establish subject matter jurisdiction. Plaintiffs are proceeding *pro se*;  
 6 therefore, the Court will liberally construe all of their claims for relief. *Ortez v.*  
 7 *Washington County*, 88 F.3d 804, 807 (9<sup>th</sup> Cir. 1996).

#### 8 A. Standard of Review

9 In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(1) in which the  
 10 moving party is asserting a facial attack, the Court must accept as true the allegations of  
 11 the complaint. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9<sup>th</sup> Cir. 2004).

12 Federal courts are courts of limited jurisdiction. *Mendoza v. Zirkle Fruit Co.*, 301  
 13 F.3d. 1163, 1174 (9<sup>th</sup> Cir. 2002). As such, federal courts are empowered to hear only  
 14 those cases that are within the judicial power of the United States, as defined by the  
 15 United States Constitution, and those cases that have been authorized by Congress.  
 16 *Estate of Frank Branson v. Commissioner of Internal Revenue*, 264 F.3d 904, 908 (9<sup>th</sup>  
 17 Cir. 2001). Because of these limits, the party initiating the suit in federal court must  
 18 affirmatively allege facts in the complaint to show that the federal court has jurisdiction  
 19 to hear the case. *Fifty Assocs. v. Prudential Ins. Co.*, 446 F.2d 1187, 1189 (9<sup>th</sup> Cir. 1970).  
 20 The presumption is that a federal court does not have jurisdiction in a particular case  
 21 unless it is affirmatively demonstrated in the complaint. *Id.* at 1190.

22 Under the well-pleaded complaint rule, a complaint for relief properly invokes  
 23 federal jurisdiction where its well-pleaded allegations raise a substantial issue of federal  
 24 law. *Yokeno v. Mafnas*, 973 F.2d 803, 807 (9<sup>th</sup> Cir. 1992). A suit may be dismissed for  
 25 lack of subject matter jurisdiction where the alleged claim under the federal statute  
 26 clearly appears to be immaterial and made solely for the purpose of obtaining  
 27 jurisdiction, or where the claim is wholly insubstantial and frivolous. *Bell v. Hood*, 327  
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1 U.S. 678, 682-83 (1946); *Broek v. Writers Guild of America, West, Inc.*, 762 F.2d 1349,  
 2 1352 n.3 (9<sup>th</sup> Cir. 1985). Simply raising a federal issue in a complaint will not  
 3 automatically confer federal question jurisdiction. Rather, the court must ask “whether  
 4 the cause of action alleged is so patently without merit as to justify. . . the court’s  
 5 dismissal for want of jurisdiction.” *Duke Power Co. v. Carolina Env. Study Group*, 438  
 6 U.S. 59, 70 (1978).

## 7           B. Plaintiffs’ Claims

### 8           1. Claim to Vacate Arbitration Award

9           Case law is fairly clear. A plaintiff seeking to confirm or vacate an arbitration  
 10 award in federal court must establish an independent basis for federal jurisdiction. *Moses*  
 11 *H. Cone Mem’l Hosp. v. Mercury Constr.*, 460 U.S. 1, 26 n.32 (1983); *Carter v. Health*  
 12 *Net of Calif., Inc.*, 374 F.3d 830, 833 (9<sup>th</sup> Cir. 2004). Thus, Plaintiffs’ claim to vacate the  
 13 arbitration award does not provide the Court with federal subject matter jurisdiction.

14           The Ninth Circuit has recognized that “‘federal jurisdiction may still lie if the  
 15 ultimate disposition of the matter depends on resolution of a substantial question of  
 16 federal law,’ such as when the petition primarily asserts as grounds for vacatur the  
 17 arbitrator’s manifest disregard of federal law.” *Carter*, 374 F.3d at 836 (quoting  
 18 *Greenberg v. Bear, Stearns & Co.*, 220 F.3d 22, 26 (2d Cir. 2000)). Plaintiffs appear to be  
 19 alleging that the arbitration award was rendered in manifest disregard of federal law,  
 20 namely, in violation of their federal due process rights. As discussed below, however,  
 21 these claims do not provide an independent basis for federal subject matter jurisdiction.

### 22           2. Due Process Claim

23           Plaintiffs assert that Defendant violated their due process rights guaranteed by both  
 24 the Fifth and the Fourteenth Amendments of the United States Constitution. The Due  
 25 Process Clause of the Fifth Amendment provides that “[n]o person shall . . . be deprived  
 26 of life, liberty, or property, without due process of law.” U.S. Const. amend V. The  
 27 Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life,  
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1 liberty, or property, without due process of law.” U.S. Const. amend. XIV. The Due  
 2 Process Clause does not apply to private actors, except in exceptional circumstances. *See*  
 3 *Rank v. Nimmo*, 677 F.2d 692, 701 (9th Cir.1982) (“The Due Process Clause of the Fifth  
 4 Amendment applies to actions of the federal government and not to individual activities  
 5 of private actors[, unless] . . . the action of the latter may be fairly treated as that of the  
 6 [government] itself.”); *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 349 (1974) (holding  
 7 that private conduct is not subject to the requirements of the Fourteenth Amendment, no  
 8 matter how discriminatory or wrongful).

9 It is not clear from Plaintiffs’ complaint who, in fact, violated their due process  
 10 rights. Assuming it is either Defendants, or the arbitrator, neither are government actors,  
 11 and, therefore, Plaintiffs’ due process claims cannot be sustained, and cannot be the basis  
 12 for federal subject matter jurisdiction.

### 13           **3. Consumer Credit Protection Act**

14 In their complaint, Plaintiffs assert that Defendant has violated several provisions  
 15 of the Consumer Credit Protection Act and, as such, jurisdiction is proper under 15  
 16 U.S.C. § 1640. Section 1640 states that any creditor who fails to comply with the  
 17 Consumer Credit Protection Act is liable for civil damages. It is not clear from reading  
 18 Plaintiffs’ complaint which sections of the Consumer Credit Protection Act Defendant is  
 19 alleged to have violated.

20 “To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain  
 21 either direct or inferential allegations respecting all the material elements to sustain a  
 22 recovery under some viable legal theory . . . [M]ore than bare assertions of legal  
 23 conclusions is ordinarily required to satisfy federal notice pleading requirements.”  
 24 *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n*, 176 F.3d 315, 319 (6<sup>th</sup>  
 25 Cir.1999). Here, Plaintiffs’ complaint contains only the summary conclusion that  
 26 Defendant’s actions violated the Consumer Credit Protection Act. The Consumer Credit  
 27 Protection Act, 15 U.S.C. §§ 1601-1693r, encompasses many other Acts, including the  
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1 Truth-in-Lending Act, the Equal Credit Opportunity Act, the Fair Debt Collection  
2 Practices Act, and the Fair Credit Report Act. Plaintiffs make no attempt in their  
3 complaint or in their briefs to present any facts concerning the elements required to prove  
4 violation of any of the aforementioned federal statutes.

5 **II. Plaintiffs' Motion to Enlarge Time to Vacate the Arbitration**

6 **Award in a State Court**

7 Plaintiffs ask that this Court enter an order granting permission for this case to be  
8 submitted to the proper state court and granting an extension of 30 days to file a petition  
9 for the purpose of vacating the arbitration award. Because the Court is granting  
10 Defendant's Motion to Dismiss, it is not necessary for the Court to grant leave for  
11 Plaintiffs to voluntarily dismiss their complaint so they can file an action in state court.  
12 This Court does not have authority to grant Plaintiffs' request for an enlargement of time  
13 to file a state petition.

14 Accordingly, **IT IS HEREBY ORDERED:**

15 1. Plaintiff's Motion to Enlarge Time to Vacate the Arbitration Award in State  
16 Court (Ct. Rec. 20) is **DENIED**.

17 2. Defendant's Motion to Dismiss (Ct. Rec. 24) is **GRANTED**.

18 3. The above-captioned cause of action is **DISMISSED, without prejudice**.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to enter  
20 this order and furnish a copies to Plaintiffs and counsel.

21 **DATED** this 23<sup>rd</sup> day of May, 2005.

22  
23 s/ ROBERT H. WHALEY  
24 United States District Judge  
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**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; DENYING  
PLAINTIFFS' MOTION TO ENLARGE TIME TO VACATE THE  
ARBITRATION AWARD IN STATE COURT ~ 5**